



House of Representatives

General Assembly

File No. 70

January Session, 2017

Substitute House Bill No. 6741

House of Representatives, March 16, 2017

The Committee on Children reported through REP. URBAN of the 43rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS RECORDS IN CERTAIN ABUSE AND NEGLECT PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 46b-129a of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective October 1, 2017*):

3 In proceedings in the Superior Court under section 46b-129:

4 (1) The court may order the child, the parents, the guardian, or other
5 persons accused by a competent witness of abusing the child, to be
6 examined by one or more competent physicians, psychiatrists or
7 psychologists appointed by the court;

8 (2) (A) A child shall be represented by counsel knowledgeable about
9 representing such children who shall be assigned to represent the child
10 by the office of Chief Public Defender, or appointed by the court if
11 there is an immediate need for the appointment of counsel during a
12 court proceeding. If the child's parent or guardian has been accused by

13 a competent witness of abusing the child, or of causing the child to be
14 neglected or uncared for, upon the assignment or appointment of
15 counsel, any party may file a motion to request the court to enter an
16 order granting such party immediate access to (i) records relating to
17 the child, including, but not limited to, Department of Social Services
18 records and medical, mental health and substance abuse treatment,
19 law enforcement and educational records, without the necessity of
20 securing further releases, and (ii) the child, for the purpose of
21 consulting with the child privately. The court shall give the parties
22 prior notice of such assignment or appointment. Counsel for the child
23 shall act solely as attorney for the child.

24 (B) If a child requiring assignment of counsel in a proceeding under
25 section 46b-129 is represented by an attorney for a minor child in an
26 ongoing probate or family matter proceeding, the court may appoint
27 the attorney to represent the child in the proceeding under section 46b-
28 129, provided (i) such counsel is knowledgeable about representing
29 such children, and (ii) the court notifies the office of Chief Public
30 Defender of the appointment. Any child who is subject to an ongoing
31 probate or family matters proceeding who has been appointed a
32 guardian ad litem in such proceeding shall be assigned a separate
33 guardian ad litem in a proceeding under section 46b-129 if it is deemed
34 necessary pursuant to subparagraph (D) of this subdivision.

35 (C) The primary role of any counsel for the child shall be to
36 advocate for the child in accordance with the Rules of Professional
37 Conduct, except that if the child is incapable of expressing the child's
38 wishes to the child's counsel because of age or other incapacity, the
39 counsel for the child shall advocate for the best interests of the child.

40 (D) If the court, based on evidence before it, or counsel for the child,
41 determines that the child cannot adequately act in his or her own best
42 interests and the child's wishes, as determined by counsel, if followed,
43 could lead to substantial physical, financial or other harm to the child
44 unless protective action is taken, counsel may request and the court
45 may order that a separate guardian ad litem be assigned for the child,

46 in which case the court shall either appoint a guardian ad litem to
47 serve on a voluntary basis or notify the office of Chief Public Defender
48 who shall assign a separate guardian ad litem for the child. The
49 guardian ad litem shall perform an independent investigation of the
50 case and may present at any hearing information pertinent to the
51 court's determination of the best interests of the child. The guardian ad
52 litem shall be subject to cross-examination upon the request of
53 opposing counsel. The guardian ad litem is not required to be an
54 attorney-at-law but shall be knowledgeable about the needs and
55 protection of children and relevant court procedures. If a separate
56 guardian ad litem is assigned, the person previously serving as counsel
57 for the child shall continue to serve as counsel for the child and a
58 different person shall be assigned as guardian ad litem, unless the
59 court for good cause also determines that a different person should
60 serve as counsel for the child, in which case the court shall notify the
61 office of Chief Public Defender who shall assign a different person as
62 counsel for the child. No person who has served as both counsel and
63 guardian ad litem for a child shall thereafter serve solely as the child's
64 guardian ad litem.

65 (E) The counsel and guardian ad litem's fees, if any, shall be paid by
66 the office of Chief Public Defender unless the parents or guardian, or
67 the estate of the child, are able to pay, in which case the court shall
68 assess the rate the parent or guardian is able to pay and the office of
69 Chief Public Defender may seek reimbursement for the costs of
70 representation from the parents, guardian or estate of the child;

71 (3) The privilege against the disclosure of communications between
72 husband and wife shall be inapplicable and either may testify as to any
73 relevant matter; and

74 (4) Evidence that the child has been abused or has sustained a
75 nonaccidental injury shall constitute prima facie evidence that shall be
76 sufficient to support an adjudication that such child is uncared for or
77 neglected.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2017</i>	46b-129a
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KID *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill grants specified access to counsel in certain cases of abuse and neglect and does not result in a fiscal impact to the state or municipalities.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**sHB 6741*****AN ACT CONCERNING THE RIGHT OF COUNSEL TO ACCESS RECORDS IN CERTAIN ABUSE AND NEGLECT PROCEEDINGS.*****SUMMARY**

This bill permits parties in certain juvenile court proceedings to file a motion to immediately access (1) certain records related to the child without securing further releases and (2) the child to consult with him or her privately.

Under the bill, parties may file such a motion once the child has been appointed or assigned counsel. But they may do so only if a competent witness has accused the child's parent or guardian of abusing or neglecting the child or causing the child to be uncared for.

Under the bill, related records include (1) Department of Social Services records and (2) medical, mental health, substance abuse treatment, and educational records. By law, attorneys who represent children in juvenile court must automatically be granted access to the related court and Department of Children and Families records (CGS §§ 17a-28(g)(3) and 46b-124(b)).

EFFECTIVE DATE: October 1, 2017

COMMITTEE ACTION

Committee on Children

Joint Favorable Substitute

Yea 12 Nay 1 (03/02/2017)